IN THE HIGH COURT OF JUDICATURE OF BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO. 2429 OF 2004

Mukesh Ramchandra Rajput ... Petitioner

versus

State of Maharashtra & ors. ... Respondents

...

Mr. Prakash Naik, for the Petitioner.

Mr. K.V. Saste, A.P.P., for the Respondents.

...

CORAM : A.M.KHANWILKAR,J.

10th December 2004

P.C.:

01. Heard Counsel for the parties. Perused the record. Rule. Rule made returnable forthwith by consent. Mr. Saste, A.P.P., waives notice for the Respondents. As short question is involved, petition taken up for final disposal forthwith by consent.

02. For the nature of order that I propose to pass, it is unnecessary to advert to all the

events that led to initiation of proceedings under section 56 of the Bombay Police Act against the Petitioner. Show cause notice was issued to the Petitioner by the first authority. In response to the show cause notice, the Petitioner not only offered his explanation but also relied on certain documents and evidence. It is not in dispute that evidence has been taken on record by the first authority. Notwithstanding that position, the first authority proceeded to pass the order of externment against the Petitioner and in the order as passed made no reference to the materials produced by the Petitioner. This grievance was specifically made before the appellate authority as has been recorded by the appellate authority in the impugned order in para 4(1).

03. In such a situation, the appellate authority ought to have sent back the matter to the first authority for considering the documents referred to and relied upon by the Petitioner and deal with those documents one way or the other. That has not been done. Assuming that the appellate authority was inclined to consider the

relevant materials itself, it was expected that it would advert to each of the documents referred to by the Petitioner and then express opinion as to why the same were not germane or ought to be discarded. However, the appellate authority in the impugned order has only made a general observation that it has perused all the materials on record. That is not enough.

04. In that sense, even the decision of the appellate authority suffers from the vice of fairness in the conduct of the proceedings and will have to be set aside. Accordingly, without going into the other contentious issues raised before this Court, I propose to relegate the Petitioner before the appellate authority, who, in turn, will consider all the materials on record and make specific reference to the stand of the Petitioner, particularly in the context of the documents relied upon by the Petitioner and deal with the same as may be advised. It is only thereafter the appellate authority will be justified in proceeding to pass final decision, one way or the other.

05. Counsel for the Petitioner, however, contends that since the first authority has acted in excess of jurisdiction, the appropriate course will be not only to set aside the order of the appellate authority, but also of the first authority and relegate the proceedings before the first authority. To support this contention, reliance was placed on the decision of our High Court reported in 1988 Mh.L.J. 1034 in the case of Umar Mohamed Malbari v. K.P. Gaikwad, Dy. Commissioner of Police and another. Reliance was placed on the observations in para 8 of this decision. However, this decision is inapposite to the proposition that is canvassed by the Petitioner. That case, however, is an authority on the proposition that the powers of the High Court are limited to examining whether the subordinate authority has acted in excess of jurisdiction and if it is satisfied in that behalf, then it can only set aside that order and stop at that. In my opinion, however, the argument canvassed on behalf of the Petitioner can be straightaway answered with reference to the purport of section 60 of the Act. It not only enables the appellate authority to decide

the appeal on the basis of materials which were alrelady brought on record before the first authority, but also enter into "further inquiry", if so advised. If it is so, while exercising appellate powers under section 60 of the Act, it will be open to the appellate authority to examine the materials already on record and form its own opinion which can be the basis to uphold the conclusion reached by the first authority or to reverse the conclusion reached by the first authority. In other words, it will not be necessary to send back the matter to the first authority for examination of the materials left out by it, for that can legitimately be done by the Appellate Authority in exercise of powers under section 60 of the Act. In the circumstances, the argument that orders of both the authorities be set aside does not commend to me.

06. Accordingly, this petition succeeds to the extent that the order of the appellate authority is set aside and the Petitioner is relegated before the appellate authority for reconsideration of the appeal afresh on its own

merits in accordance with law and as per the observations made hereinabove. The appellate authority shall, however, finally dispose of the appeal within two weeks from today and in any case not later than 31st Deember 2004. Petitioner shall appear before the appellate authority on 15th December 2004 at 2.30 p.m. on which date, the appellate authority may proceed to decide the matter finally or fix some other convenient date to ensure that the appeal is finally decided within the time specified hereinabove. All other questions raised in this petition are left open. This petition is disposed of on the above terms.

07. Parties to act on the authenticated copy of this order.

(A.M.KHANWILKAR,J.)